Western Occupational & Environmental Medical Association
WOEMA
EDUCATION | ADVOCACY | EQUITY

Welcome to the WOEMA WINDOW. This e-newsletter is sent to members by email on a monthly basis. The e-newsletter provides links to this page. Below are the items that appeared in the March 2019 issue.

TWO YEAR TRANSITION APPROVED FOR NEW PRESCRIPTION PADS

California physicians now have until January 1, 2021 to transition to new serialized pads for prescribing controlled substances.

Governor Newsom on March 11 signed AB 149 (Cooper), a bill sponsored by the CMA and supported by WOEMA, many other medical organizations, and the Medical Board itself, which sought to correct problems inadvertently created by legislation signed last year, AB 1753 (Low). "AB 149 is needed to ensure that patients throughout the state receive their prescriptions quickly and easily, while meeting the State's need to aggressively fight the opioid crisis," said the Governor regarding the first policy bill he signed in his term.

Last year's legislation required that prescribers switch to the serialized pads on Jan. 1, 2019. However, many prescribers learned of the new requirement late or not all. When many pharmacies suddenly declined to accept the old scripts, the result was chaos, with many patients experiencing interruption in their pain treatment and providers left having to piece together workarounds with individual pharmacies.

This week's reprieve specifies that the printing of serialized numbers on new pads shall not be required until DOJ can assure adequate supplies, but no later than January 1, 2020. Prescribers can use up their old pads until the start of 2021. DOJ can defer the 2021 hard switchover by six months if new supplies are still deemed inadequate.

[READ THE BILL]

FREE CME WEBINAR ON PESTICIDE ILLNESS ON WEDNESDAY, APRIL 17, 2019 • 12:00 – 1:00 PM PDT

Topic: Pesticide Illness: Regulations, Laws, and Reporting

Speaker: Yvette Nonato, MD, DPBRM, FPARM

The webinar is a brief overview of California's regulations and laws that mandate pesticide illness reporting and its requirements. It also provides information on the recognition and management of pesticide illnesses. Underreporting of pesticide related illness is an issue because many health care providers are unaware of the reporting requirement. The Department of Pesticide Regulation is responsible for regulating the sale and use of pesticides in California and enforcement pesticide laws and regulations. The Office of Environmental Health Hazard Assessment is responsible for providing physician training on the recognition, management, and reporting of pesticide related illnesses.

Learning objectives – after this webinar, participants will be able to:

- Know the legal definitions of a pesticide and pest
- Be familiar with the legal requirements and the various ways to report pesticide illnesses
- Obtain patient and exposure information helpful for pesticide illness surveillance
- Provide information on the diagnosis and treatment of pesticide illnesses

Dr. Yvette Nonato is a Physical Medicine and Rehabilitation Specialist by training, with special interests in Traumatic Brain Injuries, Spinal Cord Injuries, Neurodevelopmental Disabilities. She served as a venue Sports Medicine physician in the 1990's in a number of games. She was a medical exchange student under the Asian Medical Students Association (AMSA), and rotated in a number of large medical centers and rural hospitals in Northern and Southeast Asian countries. Her internship and residency trainings were completed in military hospitals. She was one of the few then-residents admitted into the International Spinal Cord Society (formerly IMSOP), a membership she keeps to date. Dr. Nonato has delivered lectures ranging from "Low Back Pain" to "Spinal Cord Injuries" for various specialty societies. She has also been a primary investigator for a number of Clinical Trials, notably a COX-2 inhibitor, and she fulfilled a course in Health Informatics at UC Davis. Currently, Dr. Nonato is affiliated with the Pesticide Illness Surveillance Program (PISP) of Cal-EPA's Department of Pesticide Regulation.

[REGISTER NOW]

THE IME HANDBOOK

PART 1 OF A NEW SERIES BY DR. STEVE FEINBERG

Dear fellow WOEMA members,

Some of you may be interested in performing independent medical legal evaluations (referred to as an IME) in addition to evaluations done within the workers' compensation system. WOEMA presented a symposium at the WOHC 2017 (Maui, Hi) annual conference in which Dr. Christopher Brigham and I provided a copy of our book, The IME Handbook. I will be providing installments from that book in the coming WOEMA Newsletters. As always, I am personally available to you via email to answer any questions (stevenfeinberg@hotmail.com). This 1st installment will discuss the definition of an IME, how it is different than a medical consultation or treatment, and information about potential referral sources and different types of IMEs.

Dr. Brigham has a website devoted to IME education. While you will have access through the WOEMA Newsletter to the full IME Handbook in installments, the full IME Handbook PDF is available on his website as well. There is a cost associated with Dr. Brigham's materials.

An Independent Medical Examination (IME)

An Independent Medical Examination (IME) is "a usually one-time evaluation performed by an independent medical examiner who is not treating the patient or claimant, to answer questions posed by the party requesting the IME".[i] It is a specialized evaluation best performed by a physician who should have special training and experience in assessing issues unique to an IME. Although IME reports share some similarities with conventional medical reports, the IME is distinctly different.[ii]

The IME has three major characteristics:

- "**I**" stands for Independent or Impartial.
- "**M**" stands for Medical.
- "**E**" stands for Examination or Evaluation.

Independent: While the IME may have a clinical bias on how certain issues are assessed, opinions should be consistent and impartial regardless of the referral source and based on scientific evidence based medicine (EBM).

Medical: An IME includes the essential elements of a medical assessment including a history, usually but not always a physical examination, and review of relevant records and applicable diagnostic studies followed by clinical impressions or diagnoses and then by recommendations. The IME typically also discusses, depending on the request from the referral source, disability (definition is jurisdiction dependent) based on activity of daily living deficits; and claims issues which can include causation, apportionment, impairment, work ability, appropriateness and costs of medical care and/or future needs.

Examination: An independent medical evaluation involves an examination by a health care professional at the request of a third party (or rarely by the individual examinee – usually for another opinion or to document status of an existing condition) in which the examiner will not be providing care. The physician is not involved in the medical care of the examinee (there is no physician/patient relationship or privilege with some exceptions – please see liability issues below) and provides medical opinions on issues associated with the case.

The report is not necessarily to facilitate the well-being of the examinee. Impartiality, objectivity, and an understanding of medicolegal issues are required. Unlike a medical consultation report, the IME report is not confidential and is likely to be read by many stakeholders in the claim; it should be easily read and understood by non-medical personnel. Standards for independent medical evaluations have been published.[iii]

How is an IME Different than a Medical Consultation or Treatment?

While an independent medical evaluation has some similarities to a comprehensive medical consultation, there are significant differences. Medicine and law have different approaches. The practice of law is based on the advocacy system and is contentious and argumentative in nature by design. It is a system that allows different and conflicting points of view to be heard with resolution achieved by way of a jury, judge or through arbitration. The practice of medicine is focused on diagnosing and treating patients to the best of the physician's ability to help them regain and maintain good health.

Physicians providing either a one-time consultation or ongoing medical care are accustomed to having their advice sought and followed by a usually grateful patient. Whereas in the legal system, physicians can expect to have their opinions challenged vigorously and in detail by skilled opposing attorneys. In some cases, physicians may have their credentials and ability to testify as an expert questioned in a harsh and demeaning manner. While the attack may seem personal, in fact it is only a method used by attorneys to discredit physicians' testimony to either have it thrown out or its value minimized. A skilled attorney will ask questions that are often difficult to answer and physicians may find that the opportunity for explanation may be limited. Lastly, physicians typically require that an issue have a 95% probability of being true before accepting validity; legal systems usually require only that an issue be more likely than not (>50%).

The treating physician, who has a doctor-patient relationship with the claimant, may have a different perspective than the independent medical evaluator. The treating physician has a patient-advocate role (as is appropriate) and may have little desire or experience to comment on claims issues, such as causation, apportionment, disability, impairment and work ability. The treating physician, as the patient's advocate, may be unable to assess these issues in an independent manner.[iv] it is noted that the treating physician should be advocating for what the patient needs (active rehabilitation and return to work) and not necessarily what they want (rest, medications and time off work).

The evaluating physician must assess subjective reports in relationship to the objective evidence of tissue damage or organ pathology; this is necessary to assess the extent to which the claimant is impaired or disabled from functional activities of daily living.

The treating physician may be uncomfortable providing opinions that will negatively impact benefits to the patient. With an IME, conflict and distrust may develop between claimants and both defense IME physicians and claims examiners handling their claim. Patients may feel their problems are being discounted while IME physicians and claims representatives may express doubt and skepticism about their complaints.

The treating physician's role is one of being a patient advocate. Thus, the treating physician often has a different perspective than the IME physician.

IME physicians will have their biases based on their experiences and belief systems. In most jurisdictions IMEs are more often requested by defense counsel, representing the insured. Since treating physicians are patient advocates, their opinions are often more favorable to the patient; furthermore, reports issued by treating physicians are typically less costly than an IME and plaintiff attorneys may refer to certain treating physicians. In some venues, the physician may be utilized by both sides jointly; in the California workers' compensation system, this is referred to as the "agreed" medical examiner (AME).

When the physician provides treatment, the doctor-patient relationship is one of trust. The physician is acting as an agent for the patient. When performing an IME, the physician is performing a service for the referral source. In 1992, Sullivan and Loeser recommended that treating physicians refuse to do disability evaluations since adverse consequences may ensue for the patient who has disability benefits terminated. [v]

Referral Sources

IMEs are an integral part of case management and are utilized widely by insurers and attorneys in a variety of arenas, including automobile casualty, workers' compensation, personal injury, medical malpractice and long-term disability. The term Civil or 3rd Party litigation is sometimes used to designate non-workers' compensation cases such as automobile casualty and personal injury.

It is important to understand that each of these systems/jurisdictions is unique with different definitions of disability while having different requirements for reporting.

Workers' compensation systems are no fault, but litigation issues often center around causation, the extent and duration of medical care needs, the length of temporary disability, the extent and cost of permanent impairment and/or disability, and issues of apportionment to non-industrial causation. An insurance carrier or third-party administrator (TPA) typically handles claims. Some employers are partially or fully self-insured.

Civil or 3rd Party litigation, including malpractice cases, involve primarily the cause and extent of injuries and the level of associated disability, activity of daily living deficits, loss of work capacity and future medical care costs. Once a lawsuit is filed, the defendant is generally allowed one IME. In these cases, the defendant is counting on the IME to be unusually thorough as the case may hinge on the examination findings and report conclusions.

Short- and long-term disability cases range from private disability policies to Social Security benefits for persons expected to be totally disabled for at least 12 months to individuals who have purchased or been provided by their employer private disability insurance policies. These cases focus on work ability with the definition of disability contract specific.

The next installment (part 2) in the upcoming WOEMA Newsletter will cover quality IME reporting, potential pitfalls, report writing techniques, IME report quality issues, pre-evaluation issues and interactions with the examinee.

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[i] Rondinelli RD, Guides to the Evaluation of Permanent Impairment, Glossary, p. 612, Chicago: American Medical Association; 2008.

[ii] Nierenberg C, Brigham C, Direnfeld LK, Burket C. Standards for Independent Medical Examinations. Guides Newsletter, November / December 2005.

[iii] Nierenberg C, Brigham C, Direnfeld LK, Burket C. Standards for Independent Medical Examinations. Guides Newsletter, November / December 2005.

[iv] Barth RJ, Brigham CR. Who Is in the Better Position to Evaluate, the Treating Physician or an Independent Examiner? Guides Newsletter, 8, September-October 2005.

[v] Sullivan, MD, Loeser, JD. The diagnosis of disability. Archives of Internal Medicine. 152, 1829-1835, 1992.

AOHC 2019

ATTEND THE WOEMA NETWORKING RECEPTION AT AOHC ON MONDAY, APRIL 29 – RSVP TODAY!

WOEMA members attending AOHC and their guests are invited to attend the WOEMA Members' Reception on **Monday, April 29th at 6:30 PM**. The reception will be located in the Mark Twain room inside the Frontier Tower of the Disneyland Hotel. Simply let us know you're coming by clicking on the RSVP link below:

[RSVP NOW]

CONGRATULATIONS TO THE 2019 ACOEM FELLOWS

WOEMA offers its congratulations to our members who became ACOEM Fellows in 2019. Fellowship is the highest classification of membership. It distinguishes and recognizes members of the College for their training, accomplishments, and experience in occupational medicine at the national, component, and local levels, as well as the member's academic and scientific contributions.

Please join us in congratulating the following members:

- Rosalie Banasiak, MD, FACOEM
- Jeremy Biggs, MD, MSPH, FACOEM
- Rajiv Das, MD, MS, MRO, FACOEM
- Gurinder Dhindsa, MD, MPH, FAADEP, FACOEM
- Mason Harrell, MD, MPH, FACOEM
- Marcia Isakari, MD, MPH, FACOEM
- Geoffrey Jacoby, MD, MS, FACOEM
- Paul Seung Kim, MD, FACOEM
- Amir Nicknam, MD, MPH, CIME, FACOEM
- Marlene Sanchez, MD, FACOEM
- John Westhoff, MD, MPH, FACOEM

RESERVE YOUR ROOM FOR WOHC 2019

Save money by reserving your hotel room early for the 63rd Annual Western Occupational Health Conference (WOHC), being held in sunny San Diego! The **Sheraton Hotel & Marina Bay Tower** is now accepting reservations for September 11-14, 2019. Book a room online, or by calling 619-291-2900 and be sure to mention that you are with WOEMA to receive the discounted rate. Rates start at $219/night+tax.

[BOOK NOW]

WOEMA is a regional component of the American College of Occupational and Environmental Medicine (ACOEM) and is dedicated to high-quality medical care and ethical principles governing the practice of occupational medicine.

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